UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDULLAH F. BILAL, Plaintiff, v. JOSEPH LEHMAN et al., Defendant.	)	Case No. 04-2507-JLR-JPD ORDER GRANTING PLAINTIFF'S MOTION TO AMEND

This matter comes before the Court upon plaintiff's motion to amend his 42 U.S.C. § 1983 complaint in order to add a claim under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), and to add additional defendants. Dkt. No. 36. Plaintiff argues that amendment will facilitate the efficient resolution of relevant issues because it will remove the need to bring a separate suit against the proposed new defendants.

Defendants oppose the motion. Dkt. No. 39. They argue that amendment is futile because they are entitled to qualified immunity, and that RLUIPA does not apply to plaintiff's current place of confinement because it does not receive federal funds. They also argue that amendment is inefficient and prejudicial. Having carefully considered the parties' papers and supporting materials, the Court GRANTS plaintiff's motion to file a first amended complaint. Dkt. No. 36.

I. FACTS AND PROCEDURAL BACKGROUND

On January 21, 2005, plaintiff filed a pro se 42 U.S.C. § 1983 complaint against several officials at the Monroe Correctional Complex in Monroe, Washington ("MCC"), the facility in which he was then incarcerated. Dkt. No. 6. Plaintiff alleged that MCC officials had violated his civil rights by refusing to provide him with appropriate Muslim meals that included halal meat, even though it accommodated Jewish inmates by providing them with kosher meals that included meat. Plaintiff completed his prison sentence and immediately was civilly committed under Washington's sexually violent predator statute. He is now being held indefinitely at the Special Commitment Center on McNeil Island ("SCC").

The SCC is a civil facility that is operated by the Washington State Department of Social and Health Services ("DSHS"). Decl. of Glora S. Hong, Ex. 2 (Dkt. No. 37). DSHS receives federal funds for its operations, but none of those funds are directed to the SCC.[1] Decl. of Linda Egge (Dkt. No. 39, Ex. 1). SCC shares facilities with the McNeil Island Corrections Center, a state prison operated by the Department of Corrections. Dkt. No. 37, Ex. 2.

Proceeding through court-appointed counsel, plaintiff now seeks leave to file a first amended complaint. Dkt. No. 36. Plaintiff alleges that the SCC, like MCC, refuses to provide him with halal meals that include meat, even though Jewish residents are provided with kosher meals that include meat. Plaintiff alleges that this violates RLUIPA and that it violates his rights under the Free Exercise, Establishment, and Equal Protection Clauses of the United States Constitution and 42 U.S.C. § 1983.

In response, defendants argue that amendment is futile because they are entitled to qualified immunity, and that RLUIPA does not apply to SCC since it does not receive federal funds. Dkt. No. 39. They also argue that defendants are entitled to qualified immunity, and

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[1]Ms. Egge's declaration does not state that DSHS receives federal funds, but this was conceded at oral argument.

that amendment will prejudice them and unnecessarily prolong disposition of the case.

II. ANALYSIS

A. Amendment is Appropriate Under Federal Rule of Civil Procedure 15.

Federal Rule of Civil Procedure 15 permits a party to amend his complaint upon leave of the court and states that such "leave shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). The decision to allow a party to amend pleadings rests "within the sound discretion of the trial court" and should be "applied with extreme liberality." *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 185-86 (9th Cir. 1987) (internal quotations and citations omitted). Leave to amend ordinarily should be granted unless it would cause prejudice to the opposing party, is sought in bad faith, is futile, or creates undue delay. *Id*. at 186.

Here, the record indicates that justice requires allowing plaintiff to amend his complaint. Initially, plaintiff brought this suit against officials at MCC. Subsequently, he was committed and moved to the SCC. Because plaintiff's claims against both existing and proposed defendants are virtually indistinguishable, allowing him to amend his complaint to add the SCC defendants and the RLUIPA claim will promote efficient resolution of the issues and prevent plaintiff from having to file a separate suit against the proposed SCC defendants, a course of action he has indicated he would pursue if the motion is denied. While different legal standards may apply to different defendants because of plaintiff's status as a prisoner and detainee, the Court is confident that counsels' efforts in this case will assist the Court adequately to resolve any complexities that may arise due to the distinction of the plaintiff's change in status.

Moreover, allowing plaintiff to amend will cause defendants little prejudice. Defendants noted that a motion to amend should not be used to circumvent summary judgment, and that they withdrew a motion for summary judgment that was filed before the Court appointed pro bono counsel to represent the plaintiff. Dkt. Nos. 31, 32, 39 at 10.

There is no indication that the present motion to amend was filed to thwart defendants' motion for summary judgment, nor for any other dilatory purposes. Rather, the motion is a good faith effort by pro bono counsel to ensure plaintiff's claims are brought before the Court.

Allowing the proposed amendment will result in minimal delay only. The schedule for this case has already been established. Defendants have known for some time that the motion to amend would be filed and that the Court would hear oral arguments on this motion. Dkt. Nos. 34-35. Additionally, the substance of plaintiff's amended complaint is substantially similar to the first. Hence, defendants are unlikely to be prejudiced by the surprise of new legal arguments or factual scenarios. Because little prejudice or delay will result, and because the amendment will facilitate efficient resolution of the relevant issues, justice requires granting the motion unless doing so would be futile. As discussed below, amendment is not futile.

B. Amendment is Not Futile.

Defendants argue that allowing amendment is futile. They argue that plaintiff's claims are not ripe and that RLUIPA does not apply to the SCC. Dkt. No. 39. Also, they argue that amendment is futile because the SCC defendants are entitled to qualified immunity. These arguments do not warrant denial of the motion to amend.

1. RLUIPA Applies Because DSHS Receives Federal Funds.

Defendants arguments notwithstanding, RLUIPA applies to the SCC. RLUIPA provides:

> No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution . . . unless the government demonstrates that imposition of the burden on that person — (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. § 2000cc—1(a). The term "government" includes state governments, its departments, agencies, instrumentalities, and officials thereof. 42 U.S.C. § 2000cc—5(4).

Similarly, the term "institution" includes state institutions that house the mentally ill. 42 U.S.C. § 2000cc—1(a) (citing 42 U.S.C. § 1997).

RLUIPA applies to "any case in which — . . . the substantial burden is imposed in a program or activity that receives Federal financial assistance[.]"[2] 42 U.S.C. § 2000cc—1(b). For purposes of RLUIPA, the term "program or activity" includes "*all* of the operations of a department, agency . . . or other instrumentality of a State or of a local government[.]" 42 U.S.C. § 2000cc—5(6) (referring to 42 U.S.C. § 2000d—4a) (emphasis added).

The broad definitions of both "government" and "programs and activities" indicates that RLUIPA is applicable to the proposed defendants. SCC is a civil commitment institution operated by DSHS. Although SCC does not receive any federal funds directly, this fact is of no consequence because DSHS receives federal funds and, by its plain terms, RLUIPA applies to "*all* of the operations of a department, agency . . . or other instrumentality of a State or of a local government[.]" 42 U.S.C. § 2000cc—5(6) (citing 42 U.S.C. § 2000d—4a) (emphasis added). This conclusion is consistent with the definitions discussed above and with Congress's admonition that RLUIPA be broadly construed to "the maximum extent permitted" to ensure protection of religious exercise.[3] 42 U.S.C. § 2000cc—3(g).

2. Plaintiff's Claims Are Ripe.

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[2]The second prong of that provision provides for jurisdiction if the "substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States or with Indian tribes." 42 U.S.C. § 2000cc—1(b). In his reply, plaintiff argues that jurisdiction is proper under this prong. Dkt. No. 40 at 3. The Court need not address this issue because it finds RLUIPA applicable under its spending clause prong.

[3]A different conclusion was reached in the unpublished decision in *Strauss v. Nerio*, W.D., Wash., Case No. 02-544-RJB, Dkt. No. 195. *Strauss* involved a claim brought by a Jewish SCC resident who argued that his rights had been violated when he was denied access to Bazooka bubble gum. The Court held that denying plaintiff access to chewing gum did not violate the Equal Protection Clause and dismissed plaintiff's RLUIPA claims relating to the SCC. The Court stated that RLUIPA did not apply to the SCC because it did not receive federal funds. However, *Strauss* was decided in the context of whether the RLUIPA claim had been properly raised before a magistrate judge. It is not clear that the decision was based on similar facts now presented.

Defendants also argue that amendment is futile because plaintiff's claim against the proposed defendants is not ripe. Dkt. No. 39. Defendants argue that plaintiff has not exhausted his administrative remedies, and that the proposed SCC defendants have not had an adequate opportunity to respond to plaintiff's requests for halal meals. Dkt. No. 39 at 6.

An action is considered unripe "when the issues are not sufficiently concrete for judicial resolution." *Western Oil and Gas Ass'n v. Sonoma County*, 905 F.2d 1287, 1290 (9th Cir. 1990) (internal citations omitted). Therefore, the ripeness inquiry asks "whether there yet is any need for the court to act[.]" *Id.* (citing Wright, Miller & Cooper, *Federal Practice and Procedure,* § 3532.1 (2d ed. 1984)). Here, defendants conceded at the hearing that plaintiff is not a prisoner proceeding under the Prison Litigation Reform Act and is under no obligation to exhaust his administrative remedies. 42 U.S.C. § 1997e(a). As it stands now, plaintiff was denied halal meals with meat at MCC and continues to be denied his requested meals at the SCC, despite the fact that he arrived in June of 2005. While the proposed defendants may very well be attempting to accommodate plaintiff's request, allowing amendment will not preclude or otherwise impede that effort. The claims against the proposed and existing defendants are therefore sufficiently ripe for review.

3. Qualified Immunity Defenses Do Not Render Amendment Futile.

Defendants argue that amendment is futile because they are entitled to qualified immunity. Dkt. No. 39 at 8. Regardless of its merits, this defense is premature in the context of a motion to amend. It is not clear from defendants' papers whether they intend to assert this defense for all defendants in all claims. In any case, qualified immunity does not preclude suits for injunctive and declaratory relief against defendants in their official capacity. *Los Angeles Police Protective League v. Gates*, 995 F.2d 1469, 1472 (9th Cir. 1993). If defendants wish to raise the qualified-immunity defense, they may do so in a motion to dismiss.

III. CONCLUSION

For the reasons discussed above, plaintiff's motion to amend is GRANTED. Plaintiff is directed to serve the amended complaint. The Clerk is directed to send a copy of this order to the parties and to the Honorable James Robart.

DATED this 16th day of March, 2006.

James P. Donohue

JAMES P. DONOHUE
United States Magistrate Judge